

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, JUNE 29, 2009

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APPLICATION OF

DOCUMENT CONTROL

VIRGINIA ELECTRIC AND POWER COMPANY

CASE NO. PUE-2009-00018

For approval of rate adjustment clause pursuant
to § 56-585.1 A 4 of the Code of Virginia

FINAL ORDER

On March 31, 2009, Virginia Electric and Power Company d/b/a Dominion Virginia Power ("Dominion" or "Company") filed an application with the State Corporation Commission ("Commission") pursuant to § 56-585.1 A 4 of the Code of Virginia ("Code") for approval of a rate adjustment clause ("Rider T") to recover: (i) costs charged to the Company by PJM Interconnection LLC ("PJM") for transmission services provided to the Company by PJM as determined under applicable rates, terms and conditions approved by the Federal Energy Regulatory Commission ("FERC"); and (ii) costs charged to the Company by PJM associated with demand response programs approved by FERC and administered by PJM.

The Company proposed to place Rider T into effect on September 1, 2009. According to the Company, Rider T will produce an annual net increase of \$77.9 million based on the rate period of September 1, 2009, through August 31, 2010. Rider T, as proposed by the Company, includes a revenue requirement of \$227.3 million, partially offset by a \$149.4 million reduction in base rates due to the removal of transmission rates currently included in base rates.

On April 21, 2009, the Commission issued an Order for Notice and Hearing directing Dominion to provide notice of its application, permitting written and electronic comments on the application, scheduling a public hearing for June 16, 2009, and establishing a procedural schedule for this matter. Notices of participation were filed by the Office of the Attorney

General's Division of Consumer Counsel ("Consumer Counsel"), the Virginia Committee for Fair Utility Rates ("Committee"), MeadWestvaco Corporation ("MeadWestvaco"), Chaparral (Virginia), Inc. ("Chaparral"), and the Apartment and Office Building Association of Metropolitan Washington. The Commission also received written and electronic public comments on the application.

On May 20, 2009, the Virginia Committee, MeadWestvaco, and Chaparral filed testimony, and Consumer Counsel filed comments. On May 27, 2009, the Commission's Staff ("Staff") filed testimony. On June 8, 2009, Dominion filed rebuttal testimony and a Motion to Strike Staff Testimony. On June 12, 2009, Consumer Counsel filed a response to the Company's motion. On June 15, 2009, the Company filed a Motion to Strike Consumer Counsel's response.

The Commission held a public evidentiary hearing on June 16-18, 2009. The following participated at the hearing: Dominion; Committee; MeadWestvaco; Chaparral; Consumer Counsel; and Staff. The Commission received testimony from public witnesses and from the participants' witnesses that had filed prior written testimony. The Commission also heard closing arguments at the conclusion of the hearing.

As permitted by Commission ruling at the hearing: (1) on June 22, 2009, the Committee filed a response to Dominion's Motion to Strike Staff Testimony; and (2) on June 23, 2009, Dominion filed a reply.

NOW THE COMMISSION, having considered this matter, is of the opinion and finds as follows. Section 56-585.1 A 4 of the Code deems certain costs "reasonable and prudent," and further directs that the Commission "shall approve a rate adjustment clause under which such costs ... shall be recovered on a timely and current basis from customers." Pursuant to this

statute, we approve Rider T as requested by the Company subject to the modifications required herein.

Code of Virginia

Section 56-585.1 A 4 of the Code, pursuant to which Dominion filed its application, includes the following:

4. The following costs incurred by the utility shall be deemed reasonable and prudent: (i) costs for transmission services provided to the utility by the regional transmission entity of which the utility is a member, as determined under applicable rates, terms and conditions approved by [FERC] and (ii) costs charged to the utility that are associated with demand response programs approved by [FERC] and administered by the regional transmission entity of which the utility is a member. Upon petition of a utility at any time after the expiration or termination of capped rates, but not more than once in any 12-month period, the Commission shall approve a rate adjustment clause under which such costs, including, without limitation, costs for transmission service, charges for new and existing transmission facilities, administrative charges, and ancillary service charges designed to recover transmission costs, shall be recovered on a timely and current basis from customers. Retail rates to recover these costs shall be designed using the appropriate billing determinants in the retail rate schedules.

Section 56-585.1 A 7 of the Code requires as follows:

7. Any petition filed pursuant to subdivision 4, 5, or 6 shall be considered by the Commission on a stand-alone basis without regard to the other costs, revenues, investments, or earnings of the utility. ... Any costs prudently incurred after the expiration or termination of capped rates related to other matters described in subdivisions 4, 5 or 6 shall be deferred beginning only upon the expiration or termination of capped rates, provided, however, that no provision of this act shall affect the rights of any parties with respect to the rulings of [FERC] in PJM Interconnection LLC and Virginia Electric and Power Company, 109 F.E.R.C. P 61,012 (2004). The Commission's final order regarding any petition filed pursuant to subdivision 4, 5 or 6 shall be entered not more than three months, eight months, and nine months, respectively, after the date of filing of such petition. If such petition is approved, the order shall direct that the applicable rate adjustment clause be

applied to customers' bills not more than 60 days after the date of the order, or upon the expiration or termination of capped rates, whichever is later.

Carrying Costs

We deny the Company's request to accrue and recover carrying costs on the deferred balance for Rider T. Neither the plain language of the statute, nor Commission precedent, requires recovery of such costs in this instance. Section 56-585.1 A 4 of the Code lists costs that "shall be deemed reasonable and prudent," and requires that such costs "be recovered on a timely and current basis from customers." The statute does not expressly speak to carrying costs. Rather, this statute neither mandates nor prohibits the recovery of carrying costs, and we find that recovery of such costs is not necessary in Rider T based on the circumstances appearing here.

This conclusion is consistent with Commission precedent interpreting § 56-582 B (vi) of the Code, which requires "timely recovery of ... incremental costs for transmission or distribution system reliability...." The Commission found that the plain language of that statute, which requires timely recovery, "neither mandates nor prohibits recovery of the carrying costs."¹ In this case, we similarly find that § 56-585.1 A 4 of the Code, which requires timely and current recovery, also neither expressly nor implicitly requires recovery of carrying costs.

In addition, contrary to Dominion's suggestion, nothing in the plain language of § 56-585.1 A 7 of the Code mandates a different conclusion. Dominion asserts that carrying costs should be recovered since § 56-585.1 A 7 of the Code states that "[a]ny costs prudently

¹ *Application of Appalachian Power Co., For adjustment to capped electric rates pursuant to § 56-582 B (vi) of the Code of Virginia*, Case No. PUE-2005-00056, Final Order, 2006 S.C.C. Ann. Rep. 333, 336 (2006). *See also Application of Appalachian Power Co., For adjustment to capped electric rates pursuant to § 56-582 B (vi) of the Code of Virginia*, Case No. PUE-2007-00069, Final Order, 2007 S.C.C. Ann. Rep. 474, 475 (2007) (denying recovery of carrying costs under Va. Code § 56-582 B (vi)) ("*Appalachian II*").

incurred after the expiration or termination of capped rates related to other matters described in subdivisions 4, 5 or 6 shall be *deferred* beginning only upon the expiration or termination of capped rates" (emphasis added).² This language, however, simply does not mandate accrual and recovery of carrying costs in addition to any properly deferred amounts.

As explained in *Appalachian II*, "the Commission generally does not authorize a return on regulatory assets resulting from deferred accounting even when dollar-for-dollar recovery is allowed."³ Moreover, the Company is not required to seek recovery of transmission costs and FERC demand response program costs via Rider T. That is, Rider T is not mandatory; Dominion, for example, could seek traditional recovery of transmission and FERC program costs as part of base rates.⁴ Unlike base rates, however, Rider T permits an annual true-up so that Dominion is guaranteed recovery of all of its actual Rider T costs. Accordingly, we find that it is reasonable not to include carrying costs as part of Rider T, and that the Company is not prevented from recovering its just and reasonable cost of service.

Deferred Regional Transmission Organization Costs

Dominion proposes to recover deferred regional transmission organization ("RTO") costs in Rider T. These deferred RTO costs are part of the Deferral Recovery Charges ("DRC") billed to the Company by PJM (under PJM's Open Access Transmission Tariff Rate Schedule DRC) pursuant to FERC's approval dated December 31, 2008 in Docket No. ER08-1540.⁵ These deferred RTO costs represent current FERC-approved charges for transmission services and,

² Ex. 26 at 18-24.

³ *Appalachian II*, 2007 S.C.C. Ann. Rep. at 476 (internal quotes and citation omitted).

⁴ See Va. Code §§ 56-585.1 A and B.

⁵ See, e.g., Ex. 4 (FERC's Dec. 31, 2008 *Order Accepting Proposed Tariff Revisions* in Docket No. ER08-1540-000); Ex. 2 at 27; Ex. 26 at 14-16; Consumer Counsel's May 20, 2009 Comments at 6-9; Dominion's June 8, 2009 Motion to Strike Staff Testimony at 2.

thus, are "(i) costs for transmission services provided to the utility by the regional transmission entity of which the utility is a member, as determined under applicable rates, terms and conditions approved by [FERC]..." under § 56-585.1 A 4 of the Code. Next, this same statute directs that: (1) these costs "shall be deemed reasonable and prudent;" and (2) the Commission "shall approve a rate adjustment clause under which such costs ... shall be recovered on a timely and current basis from customers." Accordingly, pursuant to § 56-585.1 A 4 of the Code, these costs shall be recovered under the Rider T rate adjustment clause.⁶

As noted by Consumer Counsel and Staff, however, these FERC-approved charges subsequently could be disallowed based (1) on rehearing by FERC, or (2) on subsequent federal appeal.⁷ If these deferred RTO costs are subsequently disallowed, then any previously recovered costs will be credited back to customers through Rider T. We further note that this Commission has challenged these costs at FERC, and that such continuing challenge is not inconsistent with our findings herein.

These FERC charges also include a carrying cost approved by FERC that, under the provisions of § 56-585.1 A 4 of the Code, shall be recovered in Rider T as part of the FERC-approved costs. No additional carrying costs, however, shall otherwise be accrued or collected attendant to these FERC-approved charges. Dominion will not be allowed to collect carrying charges on carrying charges in this matter.

⁶ FERC has concluded that these "costs, as filed, are properly recoverable wholesale costs." Ex. 4 at 13 (FERC's Dec. 31, 2008 *Order Accepting Proposed Tariff Revisions* in Docket No. ER08-1540-000). FERC further states that "[w]e leave for the Virginia Commission, or the State [sic] of Virginia, the issue of whether, or under what circumstances, these costs may be recovered in retail rates...." *Id.* In this regard, the Commonwealth of Virginia has spoken – in Va. Code § 56-585.1 A 4 – as to whether, and how, such costs are to be recovered in retail rates.

⁷ See, e.g., Consumer Counsel's May 20, 2009 Comments at 6-9; Tr. 30, 592; Ex. 26 at 14-15.

Transmission Line Losses, Transmission Congestion Costs, & Financial Transmission Rights

The Company currently recovers transmission line losses, transmission congestion costs, and Financial Transmission Right credits ("FTRs") through its fuel factor. Staff states that "[w]hile the Staff believes that it is more appropriate to include these items in Rider T, these items could continue to be handled in conjunction with the fuel factor."⁸ The Company, Consumer Counsel, and the Committee assert that these costs: (1) currently are at issue in Dominion's pending fuel factor proceeding; (2) should continue to be reflected in the fuel factor; and (3) should not be in Rider T.⁹

While transmission line losses, transmission congestion costs, and FTRs are arguably transmission-related and the Staff proposal to shift these issues to Rider T may have merit,¹⁰ we find as a matter of law that these costs and credits are not mandated to be recovered through Rider T. In this regard, we agree with Consumer Counsel and Staff that, as a matter of law, these costs could be recovered through the fuel factor or Rider T.¹¹ We find that these costs need not be addressed through Rider T at this time and may be addressed in the Company's pending fuel factor proceeding (Case No. PUE-2009-00016).¹² The question of whether to shift these issues to Rider T can be determined in future proceedings.

⁸ Ex. 12 at 12 (emphasis omitted).

⁹ See, e.g., Tr. 22, 37-39; Consumer Counsel's June 10, 2009 Response at 3-6.

¹⁰ See, e.g., Ex. 12 at 4-12. For example, Staff notes that PJM defines: (1) "'Losses' as '[t]he power that is lost as dissipated heat when power flows in *transmission lines* and transformers,'" (2) "'Transmission Congestion Charge' as '[a] charge attributable to the increased cost of energy delivered at a given load bus when the *Transmission System* serving that load bus is operating under constrained conditions,'" and (3) FTR as "'[a] financial instrument that entitles the holder to receive compensation for certain congestion-related *transmission charges* that arise when the grid is congested and differences in locational prices result from the redispatch of generators out of merit order to relieve that congestion.'" Ex. 12 at 4-5, 8 (citations omitted) (emphasis added).

¹¹ See, e.g., Consumer Counsel's June 12, 2009 Response at 3; Ex. 12 at 12.

¹² This result, however, does not preclude different treatment in subsequent years, nor does it restrict the issues that may be raised in Dominion's pending fuel factor case – or the potential findings thereon – related to these items.

Rate Design

The Committee requests modifications to the Company's proposed rate design for Rate Schedules GS-3 and GS-4. The Committee asserts that: (1) "GS-3 and GS-4 customers effectively should be charged a pass-through rate consisting of the actual demand and energy charges billed by PJM to the Company;" and (2) "in the event that the Commission does not adopt such a pass-through type rate for GS-3 and GS-4 customers, ... the demand charge [for GS-3 and GS-4 customers should be] collected on a 1 coincident peak ['1CP']) demand billing basis."¹³ MeadWestvaco recommends (1) adopting 1CP billing for GS-3 and GS-4 customers, and (2) if the Commission does not adopt 1CP for this purpose, changing the "Rider T charge for Schedule 8 standby usage [to] be based on the equivalent Schedule GS-4 energy charge."¹⁴

Based on our rejection of carrying charges and the potential confusion attendant to billing a pass-through rate,¹⁵ we do not adopt the Committee's proposed pass-through rate design. We also find that the Company's proposed rate design for GS-3 and GS-4 is reasonable based on the record, and need not be changed at this time to reflect 1CP demand billing. Applying 1CP for GS-3 and GS-4 would allow these retail customers to avoid any transmission demand charges if they happen to be off the system at the 1CP.¹⁶ We recognize, as noted by the Committee, that PJM bills transmission demand costs to Dominion based on 1CP.¹⁷ Unlike the Committee's proposed retail rate design, however, PJM's use of 1CP for wholesale cost allocation does not

¹³ Ex. 9 at 6. The Committee also addressed issues related to the use of carrying charges (*see, e.g., id.* at 7), which we do not to address as a result of the previous findings in this Final Order.

¹⁴ Ex. 10 at 5-6.

¹⁵ *See, e.g.,* Ex. 31 at 3-4.

¹⁶ Ex. 31 at 5-8.

¹⁷ Ex. 9 at 6.

allow Dominion to avoid all transmission demand charges (*i.e.*, Dominion cannot interrupt its entire Virginia load at the 1CP for this purpose).¹⁸ We do not foreclose 1CP or other alternative rate designs in the future. Rather, based on the record in this case, we do not find that these customers should be permitted to avoid all transmission demand charges when, for example, the value of such rate design or the potential impact on other customers has not been reasonably established.¹⁹

Further in this regard, we direct Dominion to prepare a rate design study related to this issue. Such study shall include, but need not be limited to, an analysis of: (1) the impact of 1CP rate design (a) on all customers in GS-3, GS-4, and Schedule 8, and (b) on other rate groups; and (2) other potential rate designs that may provide better incentives for energy efficiency and conservation. The Company shall file this rate design study with the Commission's Division of Energy Regulation, and provide a copy to all participants in this case, on or before sixty (60) days prior to the filing of Dominion's next Rider T application.

Finally, Chaparral requested two modifications that impact its existing special contract with Dominion. First, we find that it is reasonable to require Dominion (i) to assess Chaparral's energy-allocated cost of transmission as a "per kWh" rate, and (ii) to design the unit rate that will apply to Chaparral by dividing the energy allocated cost by the kWh consumption figure used in allocating that cost to Chaparral. Second, we find that offsetting adjustments, as requested by Chaparral, are not necessary under its special contract rates.²⁰

¹⁸ Ex. 31 at 7-8.

¹⁹ In addition, we similarly reject MeadWestvaco's request for special rate design changes to Schedule 8.

²⁰ See, e.g., Ex. 31 at 16; Exs. 32C and 33C. These potential adjustments include information treated as confidential in this proceeding and, thus, are not set forth in detail herein.

Administrative Charges

As noted above, § 56-585.1 A 4 of the Code states that "the Commission shall approve a rate adjustment clause under which such costs, including, without limitation, costs for transmission service, charges for new and existing transmission facilities, *administrative charges*, and ancillary service charges designed to recover transmission costs, shall be recovered on a timely and current basis from customers" (emphasis added). Staff identified five charges that the Company classified as "administrative charges" under this statute, which Staff asserts "are not specifically related to transmission services."²¹ These five charges currently total over \$9.5 million.²²

In rebuttal testimony, the Company responded that the "administrative charges" referenced in this statute are not limited to administrative charges associated with transmission services but, rather, "appl[y] to all administrative charges approved by PJM and charged to the Company under the PJM OATT."²³ At the conclusion of the hearing, however, Dominion agreed to remove the five charges listed by Staff from the Company's proposed Rider T.²⁴ We find that the five charges identified by Staff shall not be included in Rider T.²⁵

Interruptible Load for Reliability Costs

As explained by Staff, Interruptible Load for Reliability ("ILR") costs are part of a PJM-administered demand response program, (*i.e.*, PJM's Emergency Load Response

²¹ Ex. 12 at 13-16. The five charges are for market support, capacity resource and obligation management, market monitoring, annual FERC charge, and Organization of PJM States, Inc.

²² *Id.*

²³ Ex. 26 at 26.

²⁴ Tr. 606.

²⁵ The Company, of course, is not precluded from seeking recovery of these costs in rates, under the standards applicable to the rate proceeding in which such costs are addressed.

Program).²⁶ Dominion's application, however, did not include all ILR charges in Rider T. We adopt Staff's proposal, which was subsequently agreed to by the Company, that all ILR costs be recovered in Rider T.²⁷ As further discussed by the Company, the rate period ILR costs – the amount of which was unknown when the application was filed – may be deferred until the next Rider T case to the extent they are unrecovered by the rates we approve herein.²⁸ In future Rider T cases, rate period amounts may be used to determine the ILR revenue requirement.²⁹

Formula Revenue Requirement

We approve the Company's request to use a formula approach for determining revenue requirements in its next Rider T application. As explained by Staff, "a formula approach may streamline future Rider T proceedings by providing parties with a familiar starting point in each application."³⁰ As also explained by Staff, however, the use of a formula approach will not obviate the need for future Rider T proceedings that "closely examine" Rider T applications and, thus, will not eliminate the possibility of "ratemaking changes in the future."³¹ We also direct that a true-up mechanism be used for over- or under-recovery of amounts approved herein.

Motions to Strike

The Company filed a Motion to Strike Staff Testimony and a Motion to Strike Consumer Counsel's Response. At the conclusion of the hearing, Dominion withdrew its Motion to Strike Consumer Counsel's Response. The issues raised in Staff's testimony go to questions of law and

²⁶ Ex. 14 at 2.

²⁷ *Id.* at 2-3; Ex. 26 at 25.

²⁸ Ex. 26 at 25.

²⁹ *Id.*

³⁰ Ex. 14 at 18.

³¹ *Id.*

of fact. We rule on both the questions of law and of fact, as necessary, as part of this Final Order. Accordingly, we deny Dominion's Motion to Strike Staff Testimony.

Accordingly, IT IS HEREBY ORDERED THAT:

(1) The Company's application is granted in part and denied in part as set forth herein.

(2) Within thirty (30) days from the date of this Final Order, the Company shall file with the Commission's Division of Energy Regulation a revised Rider T, with supporting workpapers, that reflects the findings and requirements set forth herein.

(3) Rider T as approved herein shall become effective for service rendered on and after September 1, 2009.

(4) The Company shall file the rate design study required herein with the Commission's Division of Energy Regulation, and provide a copy to all participants in this case, on or before sixty (60) days prior to the filing of Dominion's next Rider T application.

(5) Dominion's Motion to Strike Staff Testimony is denied.

(6) This matter is dismissed.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to all persons on the attached Service List; and the Commission's Office of General Counsel and Divisions of Energy Regulation, Economics and Finance, and Public Utility Accounting.

A True Copy
Teste:


Clerk of the
State Corporation Commission

Service List

William H. Baxter, II, Esquire
Karen, L. Bell, Esquire
Dominion Resources Services, Inc.
120 Tredegar Street
Richmond, VA 23219

C. Meade Browder, Jr., Esquire
Sr. Assistant Attorney General
Office of the Attorney General
Division of Consumer Counsel
900 East Main St., 2nd Fl.
Richmond, VA 23219

Frann G. Francis, Esquire
Senior Vice President & General Counsel
Apartment & Office Building
Association of Metropolitan Washington
1050 17th Street NW, Suite 300
Washington, DC 20036

Todd J. Griset, Esquire
Patrick R. Scanlon, Esquire
Donald J. Sipe, Esquire
Preti, Flaherty, Beliveau & Pachios LLP
Post Office Box 1058
Augusta, ME 04332-1058

Timothy B. Hyland, Esquire
Stein Sperling Bennett DeJong
Driscoll & Greenfeig, P.C.
25 W Middle Lane
Rockville, MD 20850-2204

Irene A. Kowalczyk
Director, Energy Policy & Supply
MeadWestvaco Corp.
299 Park Ave, 13 Fl
New York, NY 10171

Louis R. Monacell, Esquire
Edward L. Petrini, Esquire
Christian & Barton, LLP
909 E. Main Street, Suite 1200
Richmond, VA 23219

Jeff Pollock
Jeff Pollock, Inc.
12655 Olive Blvd., Suite 335
St. Louis, MO 63141

Stephen H. Watts, II, Esquire
McGuireWoods L.L.P.
One James Center, 901 East Cary Street
Richmond, Virginia 23219-4030